IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7122 OF 2004

Chairman, Dusar Vividh Karyakari
Seva Society, Solapur ... Petitioner

versus

Krishnaji L. Sawant and others ... Respondents

...

Mr. G.S. Godbole, for the Petitioner.

...

CORAM : A.M.KHANWILKAR,J.

3rd September 2004

P.C.:

. Mr. Godbole contends that the Court ought to have first framed preliminary issue as was required by section 9A of the Code of Civil Procedure, as applicable to the State of Maharashtra and decide that issue. This submission clearly overlooks the fact that the question raised was not of jurisdiction of the Court, but about the maintainability of the suit for want of notice under section 164 of the Maharashtra Co.operative Societies Act. That

cannot be the basis for framing issue in terms of section 9A of the C.P.C. as applicable to the State of Maharashtra. In my opinion, no interference is warranted with the discretionary order passed by the Court below. However, it is observed that the Court below may examine all aspects of the matter during the trial by framing necessary issue, whether the suit is maintainable for want of notice under section 164 of the Maharashtra Co-operative Societies Act and that issue be decided on its own merits in accordance with law, along with other issues at the end of the trial. All questions in that behalf are left open. Petition disposed of with the above observations.

(A.M.KHANWILKAR,J.)